United States of America
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

Reply Comments
of the Illinois Commerce Commission
on the Proposed Amendment to
the Missoula Plan

On July 24, 2006, the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation filed the Missoula Plan (or "Plan") for intercarrier compensation reform. The Illinois Commerce Commission ("ICC") filed comments on October 25, 2006, and filed reply comments on January 25, 2007, in opposition to the plan. As stated in earlier comments, the ICC believes that the Missoula Plan, however well-intentioned, is fraught with problems. It consists of a complex multi-step, multi-track, multi-year, rate restructuring phase-in approach funded in no small part through a vaguely designed and structurally flawed subsidy system. The ICC estimates that the Early Adopter Working Group's proposed amendment only exacerbates those problems and increases the unjustified additional cost burden on Illinois ratepayers by over $18 million per year.

On January 30, 2007, the Chairman of the Wyoming Public Utilities Commission, staff members from the Indiana Utility Regulatory Commission, the Maine Public Utilities Commission, the Nebraska Public Service Commission, the Vermont Department of Public Service, and the Vermont Public Service Board and the Missoula Plan Supporters[1] ("Early Adopter Working Group") filed a proposed amendment to the Missoula Plan to incorporate a federal benchmark mechanism ("FBM").[2] On February 5, 2007, the Supporters of the Missoula Plan corrected two errors in the attachment to the January 30th filing.[3] The FBM includes a proposal addressing issues faced by "early adopter" states, *i.e*. states that have already taken steps to substantially reduce intrastate access rates. On February 16, 2007, the Commission released its notice seeking comment on the amendments to the Missoula Plan Intercarrier Compensation proposal to incorporate a FBM, setting March 19, 2007, as the comment date, and April 3, 2007, as the date for reply comments. On March 16, 2007 the Commission extended the pleading cycle, setting March 28, 2007, as the revised comment date, and April 12, 2007 as the revised date for reply comments. The ICC does hereby file these reply comments in the above-captioned docket.

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[1] Supporters of the Missoula Plan include AT&T, Global Crossing, Level 3 Communications, Embarq, Windstream, and 336 members of the Rural Alliance, among others.

[2] *Ex parte* letter filed by the Chairman of the Wyoming Public Service Commission, staff members from four other state commissions, and the Missoula Plan Supporters. *See* Letter from Peter Bluhm, Esq., Vermont Public Service Board; Christopher Campbell, Telecommunications Director, Vermont Department of Public Service; Steve Furtney, Chairman, Wyoming Public Service Commission; Angela DuVall Melton, Esq., Nebraska Public Service Commission; Joel Shifman, Esq., Maine Public Utilities Commission; Joseph Sutherland, Executive Director, Indiana State Regulatory Commission; and the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed January 30, 2007) ("FBM Ex Parte Letter ").

[3] Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed February 5, 2007).

The Early Adopter Working Group presents a six and a half (6 ½) page description of the plan and tables purporting to show the effects of the proposal on a state-by-state basis. The summary nature of the Early Adopter Working Group's proposal, and the inherent unreliability of the state-by-state estimates upon which it relies, prevents the ICC from offering anything but general comments.

However, as nearly as the ICC can determine, the FBM proposed by the Early Adopter Working Group does, in general terms, two things. First, it considerably expands the funding available to those states that have taken affirmative steps to reduce intrastate access rates, from a projected $200 million, to approximately $800 million. Second, it attempts to refine the method whereby high cost carriers qualify for restructuring support to compensate for foregone intrastate access charges.

In their initial comments to the Early Adopter Working Group's Amendment to the Missoula Plan, the Five MACRUC States assert both that the FBM will have a negative impact on net contributor states and that it will have a disproportionate impact on many states to largely benefit a few states.[4] The ICC concurs and believes it is important to expand on the comments regarding these concerns.

[4] The Comment of Five State Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners and Their State Commissioners (collectively, "Five MACRUC States"), Docket No. CC 01-92 (filed 3/26/07) at 6 (the Five MACRUC States include the Delaware Public Service Commission, the Public Service Commission of the District of Columbia, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission and the Virginia State Corporation Commission).

While at first glance the FBM approach would appear to be more equitable than the approach detailed in the initial Missoula Plan proposal, the proposed amendment fails to adjust for those states, like Illinois, that have properly (or, at least, more appropriately than self-styled early adopter or even non-adopter states) managed intrastate access charge rates from their inception. This oversight results in the absurd consequence of penalizing those ratepayers in the most properly managed states by forcing them to subsidize to an even greater degree those in states that were late to address the problem.

The Early Adopter Working Group asserts that the FBM "will address the complex myriad of early adopter issues." The ICC does not agree. The FBM does not remedy the fundamental inequities inherent in the Missoula Plan, but rather, it exacerbates these inequities. It does nothing to address the fundamental flaw in the Missoula Plan that results in the ratepayers of states that have responsibly managed the rates over the years, such as Illinois, to subsidize those in states that allowed for excessive rates to compile – in the amount of multiple millions of dollars per year. This is fundamentally unfair and unjustifiable from a public policy standpoint. The ICC estimates that the Missoula Plan, in its initial form, could cost Illinois ratepayers nearly $60 million per year.[5] The ICC

[5] In the July 24, 2006 National Association of Regulatory Utility Commissioners' (NARUC's) Task Force filing of the Missoula Plan the Missoula Plan supporters initially estimated the size of the Restructuring Mechanism to be $1.5 billion. Missoula Plan Supporters Letter to Chairman Baum Dated July 18, 2006, Executive Summary at 13. Based on this estimate and the assumption that Illinois would receive a *de minimis* amount of Restructuring Mechanism funding, the ICC estimated that Illinois would be a net contributor to the Restructuring Mechanism with a net contribution of approximately $60 million per year. Comments of the Illinois Commerce Commission at 6. Unaccountably, and without explanation, the Missoula Plan supporters now estimate the size of the Restructuring Mechanism to be $1.25 billion. The Missoula Plan supporters further estimate that Illinois will receive approximately $7 million in Restructuring Mechanism funding. Under the revised figures, the ICC estimates that it would be a net

estimates that the FBM amendment would increase the additional cost burden to the Illinois ratepayers, over and above the cost burden imposed on Illinois under the approach detailed in the initial Missoula Plan proposal, by over $18 million per year.

The fundamental flaw in the Restructuring Mechanism proposed in the Missoula Plan is that this mechanism directs subsidies toward states that currently have high access rates that are not a product of high costs. For example, the Missoula Plan requires certain rural carriers to reduce their intrastate access charges to interstate access charge levels that, according to its sponsors, such rural carriers view as cost-based and then allows such rural carriers to continue to recover above cost revenues, in part, from the Restructuring Mechanism.[6] In other words, the rural ILECs benefiting from the proposed subsidy have maintained intrastate access charges at levels that are, by their own admission, greater than cost. Thus, by providing nationally funded subsidies to high <u>rate</u> areas, rather than high <u>cost</u> areas, the Missoula Plan forces ratepayers in states that have been relatively proactive in maintaining cost based access rates to subsidize those in states that have not. Clearly, such a mechanism has no foundation in universal service principles, which prescribe subsidies to keep high cost services affordable but do not prescribe subsidies to replace revenues that carriers would otherwise lose when they reduce rates to

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contributor to the Restructuring Mechanism with a net contribution of approximately $43 million dollars. In either case, based on the figures supplied by the Missoula Plan supporters in support of the FBM proposal, Illinois' net contribution to the subsidy scheme contained in the Missoula Plan would increase by over $18 million if the FBM proposal were adopted.

[6] Missoula Plan Supporters Letter to Chairman Baum, Dated July 18, 2006, Executive Summary at 1.

cost. Furthermore, it is inherently inequitable and inefficient for a consumer in Illinois or any other state to pay to support the non-cost based revenues of carriers in other states. The proposed amendment does not correct this flaw.

The Missoula Plan contains provisions for an Early Adopter Fund designed to "enable States to recover some of the funding they have distributed to carriers that have reduced their intrastate access rates."[7] While this proposal is not explained in substantive detail, the notion behind the Early Adopter Fund appears to be that it will provide subsidies to areas which at one point had high access rates, in which State funding, local rate increases, and/or other new line items subsequently permitted reductions.[8] Thus, like the Restructuring Mechanism, the Early Adopter Fund is designed to distribute funding to high rate areas without regard to cost. However, unlike the Restructuring Mechanism, the Early Adopter Fund is designed to distribute funding to carriers in states that have reduced rates from historically high levels, rather than states that have not. This approach does not take into account, and in fact penalizes, those states, like Illinois, that did not allow intrastate access rates to significantly exceed interstate access rates in the first place.

Contrary to the representations of its proponents, the Early Adopter Fund does not make the Missoula Plan subsidy scheme more equitable. The distribution of an additional $200 million or more in subsidies merely makes the Plan more expensive. If more subsidies are paid out, then subscribers will be compelled to make more contributions to fund these subsidies. An increase in

[7] Missoula Plan, Section VI.B at 76.
[8] Missoula Plan, Section VI.B. , footnote 27, at 76.

the size of the funding program has the very real potential to increase inequitable burdens placed on subscribers in states that have been relatively diligent in maintaining cost based access rates. For example, the ICC is concerned that, under the Restructuring Mechanism, Illinois subscribers will be required to provide subsidies to preserve revenues, and in particular those revenues deriving from intrastate access rates currently in excess of costs, of telecommunications providers in other states. The Early Adopter Fund, as proposed in the Missoula Plan, heightens the ICC's concerns regarding the Restructuring Mechanism, by increasing the amount of subsidies that Illinois subscribers would be compelled to provide to other states by requiring Illinois subscribers to pay additional surcharges to further replace revenues that were in excess of costs at some point in the past (but are no longer so today).

The FBM provides additional detail regarding the Early Adopter Fund contained in the Missoula Plan. In doing so, the FBM gives substance to, instead of relieving, the ICC's concerns regarding the mechanisms used to fund the rate reductions contained in the Missoula Plan. To see why this is the case, it is important to consider the four types of FBM funding that the Early Adopted Working Group proposes as supplements to the Restructuring Mechanism from the perspective of a state, such as Illinois, that has striven to maintain cost based switched access and local rates since switched access charges were first developed.

Category A Funding provides, for carriers that have residential revenues per line above a benchmark, funding that permits them to avoid in part or in whole increasing residential subscriber line charges ("SLC") as required under the initial Missoula Plan.[9] Accordingly, because SLC charges are charges directly to carrier customers, Category A funding will actually reduce the amount of replacement revenue called for by the Missoula Plan that is directly recovered from carriers' own customers and increases the amount of revenue replacement that is subsidized by customers of other carriers and in other states. Again, the primary problem with this proposal is that it is based on residential revenues per line rather than residential costs per line. Under such circumstances, subscribers in a state that has striven to maintain cost based switched access and local rates since switched access charges were first developed will be compelled to provide subsidies to customers in other states to replace non-cost based revenues that are built into current rates. This is inherently unfair.

Category B Funding expands on Category A funding by providing subsidies to carriers that have residential revenues per line above an established benchmark. Thus Category B funding goes beyond allowing such carriers to simply avoid SLC increases called for under the Missoula Plan; indeed, Category B funding provides subsidies to such carriers that actually allow them to reduce current SLCs and/or local rates, (or alternatively replace state USF funds that allow carriers to reduce current SLCs and/or local rates).[10] That is, Category B funding not only compels contributors to the FBM to more heavily subsidize carriers that must, under the Plan, forgo existing intercarrier compensation revenues, but also compels contributors to the FBM to subsidize carriers that

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[9] FBM Ex Parte Letter, Attached Proposal, "Supporting Comparability Through a Federal Benchmark Mechanism" ("FBM") at 4.

[10] FBM at 4-5.

choose, under the Plan, to forgo existing end user charges. Again, from the perspective of a state that has striven to maintain cost based switched access and local rates since switched access charges were first developed, it appears more likely that subscribers in such a state will be compelled to provide subsidies to customers in other states to replace non-cost based revenues that are built into current rates or current state universal service funds.

Category C Funding expands on Category B funding by adding subsidies for a state with a state universal service program, where the state certifies the state universal service funds are used to reduce switched access rates, so that total Category B and Category C funding is at least equal to the minimum of the state universal fund sizes or $10 million, whichever is less.[11] Again, from the perspective of a state that has striven to maintain cost based switched access and local rates since switched access charges were first developed, it appears more likely that subscribers in such a state will be compelled to provide subsidies to customers in other states to replace non cost based revenues that are built into current state universal service funds.

Finally, Low Rate Adjustment Funding increases the amount of funding that a carrier must recover directly from its customers (through SLC charges) and reduces the amount of funding a carrier is permitted to recover through the Restructuring Mechanism when a carrier's residential revenue per line plus its proposed SLC increase under the Missoula Plan fall short of a benchmark.[12] Thus, in cases where a carrier has maintained relatively low local rates,

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[11] FBM at 5-6.
[12] FBM at 6-7.

replacement of access charge revenues will fall by a larger amount than was originally proposed in the Missoula Plan to the carrier's own customers. Because it results in at least some reduction in the size of the FBM subsidies, Low Rate Adjustment Funding, alone among the four supplemental support proposals, has at least some potential to mitigate the unfair treatment of the most properly managed states. Even this proposal, as presently designed, very likely represents only a small mitigation of the overall inequity associated with the combined Missoula Plan and FBM funding mechanisms. According to the Early Adopter Working Group's own estimates, the Low Rate Adjustment funding adjustment reduces the overall FBM subsidies by only $25 million or 3%.[13]

The FBM's design simply does not remedy the inequitable treatment of states that have striven to maintain cost based switched access and local rates since switched access charges were first developed. In fact, it very likely exacerbates such inequitable treatment by requiring customers in such states to fund subsidies that replace even more non-cost based revenues of carriers in other states than does the Restructuring Mechanism. One need look no further than the Early Adopter Working Group's estimates of the net effect of the FBM on Illinois. According to the Early Adopter Working Group, Illinois will receive approximately 1.8%, or $14.5 million, of FBM's fund.[14] Yet, when it comes to contributing to nationwide universal service programs, Illinois has contributed nearly 4.05% of funding.[15] Thus, Illinois stands to contribute approximately $32.6

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[13] *Id.*

[14] FBM, Attached Table, "Effects of Missoula Plan Restructure Mechanism and FBM, at 1.

[15] See FCC, Universal Service Monitoring Report, CC Docket No. 98-202, 2006, Released 12/06, Table 1.12 at 1 – 37.

million. This would make Illinois a net contributor to (rather than receiver from) the FBM fund of over $18 million dollars. To be clear, the FBM mechanism further penalizes Illinois, beyond the penalty inherent in the initial Missoula Plan proposal, for its progressive regulation of interstate access rates and rates in general. The FBM proposal fails to remedy and, in fact, exacerbates the inequitable treatment of states like Illinois that have striven to maintain cost based switched access and local rates since switched access charges were first developed.

In their initial comments, the Five MACRUC states also assert that the FBM proposal contains insufficient detail and inadequate evidence regarding alleged consumers benefits.[16] The ICC again concurs and believes it is important to expand on the comments regarding these concerns. The ICC's analysis of the proposed amendment indicates that the Early Adopter Working Group's attempts to quantify the impact of the FBM proposal are misleading and flawed. As an initial matter, the Early Adopter Working Group presents statewide estimates of funding in each category, with no description of how the estimates were derived, what underlying data was used to make the calculations, or what source the underlying data was derived from. Given that much of the data necessary to make such calculations (*e.g.*, carrier by carrier interstate and intrastate demand for affected services) is not public information, it is unclear whether, for example, a proxy was used to estimate non-pubic information or

[16] The Comment of Five State Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners and Their State Commissioners, Docket No. CC 01-92 (filed 3/26/07) at 4-5, Comments of the New York State Department of Public Service, CC Docket No. 01-92 (dated 3/19/07) at 4, and Comments of the Public Utility Commission of Ohio, CC Docket No. 01-92 (filed 3/19/07) at 5.

whether instead carriers universally supplied such information to the Early Adopter Working Group. In either case, the estimates presented are unverifiable based upon the information presented.

Even assuming for the sake of argument that the Restructuring Mechanism and FBM funding levels are reasonably accurate, the Early Adopter Working Group does not use them properly when it computes the net benefit to residential customers. First, the Early Adopter Working Group assumes that all subsidies flow through to what appear to be ILEC wireline residential customers as net benefits.[17] While it may or may not be the case that all subsidies will flow through to customers in the form of reduced rates, it is certainly not true that all subsidies will flow through to ILEC wireline residential customers. The Restructuring Mechanism is a subsidy mechanism that allows carriers to replace revenues from access charges – reductions that will occur for both residential and non-residential traffic, for both wireline and wireless traffic, and for both ILEC and non-ILEC traffic. There is no justification to assume that the entirety of Restructuring Mechanism and FBM funding will exclusively and entirely be passed through to ILEC wireline residential customers. Furthermore, the Early Adopter Working Group assumes that contributions will be received from assessments on all types of traffic including wireline, wireless, special access, residential, and business.[18] Thus, the Early Adopter Working Group examines a limited customer set (ILEC wireline residential customers) and assumes all

[17] FBM Ex Parte Letter, Attached Table entitled “Model Results by State with Estimates of Net Benefit to Residential Customers.”

[18] FBM Ex Parte Letter, Attached Table entitled “Projected Per Unit USF Assessment Charge Per Month Funding Derived From Working Telephone Numbers and Special Access Connections Including CLEC Payments – No Assessment on Broadband Collections or Lifeline.”

benefits accrue to that customer set, but that only a fraction of costs accrue to that set. This approach is both incorrect and misleading.

Under the Missoula Plan, funds will shift and flow between states, carriers, and customer groups in very complicated and arguably inestimable and incalculable ways. However, there is one uncomplicated piece of the Plan. Subsidies provided through the Restructuring Mechanism and FBM will need to be funded by an equal amount of contributions. The Early Adopter Working Groups presentation does not acknowledge this fact and does not provide any estimate of the net total subsidy flows. By examining only one customer segment of the market (and doing so improperly) the Early Adopter Working Group gives the impression that consumers need only pay on average \$0.38 per line to get on average \$2.11 cents in subsidies. Unfortunately, the inarguable truth is that for every dollar in subsidies given through the Restructuring Mechanism and FBM, a dollar must be collected from subscribers. The Commission should not be misled into believing that money to fund these subsidies will rain from the sky. It will not, it will come from telecommunications subscribers and will very likely come disproportionately from those subscribers in Illinois.

The Early Adopter Working Group states that its three guiding principles in developing its FBM were to: 1) create a fair and balanced approach among states; 2) manage the political feasibility of establishing a new federal mechanism that provides for access recovery at a national level; and 3) address concerns of all the early adopter states, not just a handful.

Despite its best efforts, the Early Adopter Working Group has failed on all three accounts. Because subsidies are not distributed on the basis of any quantifiable need, but rather tied to non-cost based markups in current or historical rates, the size and distribution of subsidies becomes partially, if not entirely, random and inequitable. So long as subsidy proposals are directed at replacing non cost based revenues they will remain random and inequitable. As the Early Adopter Working Groups efforts reveal, <u>no</u> amount of reengineering, no matter how well intentioned, is going to correct this problem.

For all of the reasons above, the ICC recommends the Commission reject the FBM proposal as well as the Missoula Plan. The supporters of the Missoula Plan, as well as those of the proposed amendment, have offered no legal justification for the adoption of a Plan that would penalize the ratepayers of those states that have properly managed this issue from the beginning by forcing them to heavily subsidize those in other states through the proposed unjustified and excessive subsidies contained in the Plan and the proposed amendment.

Respectfully submitted,

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